

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:03-CR-319-01-F2
No. 5:12-CV-458-F

NATHAN LEE FOSTER,)	
Movant,)	
)	
v.)	<u>O R D E R</u>
)	
UNITED STATES OF AMERICA)	
Respondent.)	

This matter is before the court on movant's Motion for Reduction of Sentence [DE-69] pursuant to the 2010 retroactive amendment to the advisory United States Sentencing Guidelines and the Fair Sentencing Act of 2010, and his Motion to Vacate, Set Aside or Correct his sentence [DE-70], pursuant to 28 U.S.C. § 2255. The court has reviewed Foster's motions, together with the record herein and the applicable law, and concludes that he is not entitled to relief under either provision.

Foster may not benefit from the 2010 retroactive crack amendment to the USSG, because he is a career offender. Furthermore, the record reflects that his career offender status is supported by four prior felony convictions of a crime of violence or a controlled substance offenses that remain valid as predicates, even after the opinion in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011). Accordingly, Foster's Motion for Reduction of Sentence [DE-69] is DENIED.

Foster's § 2255 motion [DE-70] is yet another successive petition for which leave must be obtained from the Fourth Circuit Court of Appeals before pursuing in this court. *See* 28

U.S.C. § 2255(h). Therefore, Foster's successive § 2255 motion is DISMISSED in order that he may petition the appellate court for leave to file.

The Clerk of Court is DIRECTED to notify the movant, and to close this case.


CERTIFICATE OF APPEALABILITY

I, James C. Fox, United States District Judge for the Eastern District of North Carolina, having entered an order denying the application for relief pursuant to 28 U.S.C. § 2255 from which the movant, Nathan Lee Foster, may request an appeal, am of the opinion that Foster has failed to make a substantial showing of the denial of a constitutional right, and that no reasonable jurist would find this court's assessment of his constitutional claims debatable.

Therefore, it is ORDERED a Certificate of Appealability is DENIED.

SO ORDERED.

This, the 31st day of July, 2012.



JAMES C. FOX
Senior United States District Judge